

(ii) The manufacturer of a product or accessibility feature to be used in a transportation facility or facilities.

(2) The requesting party shall provide the following information with its request:

(i) Entity name, address, contact person and telephone;

(ii) Specific provision(s) of Appendices B and D to 36 CFR part 1191 or Appendix A to this part concerning which the entity is seeking a determination of equivalent facilitation.

(iii) [Reserved]

(iv) Alternative method of compliance, with demonstration of how the alternative meets or exceeds the level of accessibility or usability provided in Appendices B and D to 36 CFR part 1191 or Appendix A to this part; and

(v) Documentation of the public participation used in developing an alternative method of compliance.

(3) In the case of a request by a public entity that provides transportation facilities (including an airport operator), or a request by an air carrier with respect to airport facilities, the required public participation shall include the following:

(i) The entity shall contact individuals with disabilities and groups representing them in the community. Consultation with these individuals and groups shall take place at all stages of the development of the request for equivalent facilitation. All documents and other information concerning the request shall be available, upon request, to Department of Transportation officials and members of the public.

(ii) The entity shall make its proposed request available for public comment before the request is made final or transmitted to DOT. In making the request available for public review, the entity shall ensure that it is available, upon request, in accessible formats.

(iii) The entity shall sponsor at least one public hearing on the request and shall provide adequate notice of the hearing, including advertisement in appropriate media, such as newspapers of general and special interest circulation and radio announcements.

(4) In the case of a request by a manufacturer or a private entity other than an air carrier, the manufacturer

or private entity shall consult, in person, in writing, or by other appropriate means, with representatives of national and local organizations representing people with those disabilities who would be affected by the request.

(5) A determination of compliance will be made by the Administrator of the concerned operating administration on a case-by-case basis, with the concurrence of the Assistant Secretary for Transportation Policy.

(6)(i) Determinations of equivalent facilitation are made only with respect to transportation facilities, and pertain only to the specific situation concerning which the determination is made. *Provided, however*, that with respect to a product or accessibility feature that the Administrator determines can provide an equivalent facilitation in a class of situations, the Administrator may make an equivalent facilitation determination applying to that class of situations.

(ii) Entities shall not cite these determinations as indicating that a product or method constitutes equivalent facilitation in situations, or classes of situations, other than those to which the determinations specifically pertain.

(iii) Entities shall not claim that a determination of equivalent facilitation indicates approval or endorsement of any product or method by the Federal government, the Department of Transportation, or any of its operating administrations.

[71 FR 63265, Oct. 30, 2006]

§ 37.11 Administrative enforcement.

(a) Recipients of Federal financial assistance from the Department of Transportation are subject to administrative enforcement of the requirements of this part under the provisions of 49 CFR part 27, subpart C.

(b) Public entities, whether or not they receive Federal financial assistance, also are subject to enforcement action as provided by the Department of Justice.

(c) Private entities, whether or not they receive Federal financial assistance, are also subject to enforcement action as provided in the regulations of

§ 37.13

the Department of Justice implementing title III of the ADA (28 CFR part 36).

[56 FR 45621, Sept. 6, 1991, as amended at 61 FR 25416, May 21, 1996]

§ 37.13 Effective date for certain vehicle specifications.

(a) The vehicle lift specifications identified in §§ 38.23(b)(6), 38.83(b)(6), 38.95(b)(6), and 38.125(b)(6) of this title apply to solicitations for vehicles under this part after January 25, 1992.

(b) The vehicle door height requirements for vehicles over 22 feet identified in § 38.25(c) of this title apply to solicitations for vehicles under this part after January 25, 1992.

[56 FR 64215, Dec. 9, 1991]

§ 37.15 Temporary suspension of certain detectable warning requirements.

The detectable warning requirements contained in sections 4.7.7, 4.29.5, and 4.29.6 of appendix A to this part are suspended temporarily until July 26, 2001.

[64 FR 64837, 64838, Nov. 23, 1998]

§§ 37.16–37.19 [Reserved]

Subpart B—Applicability

§ 37.21 Applicability: General.

(a) This part applies to the following entities, whether or not they receive Federal financial assistance from the Department of Transportation:

(1) Any public entity that provides designated public transportation or intercity or commuter rail transportation;

(2) Any private entity that provides specified public transportation; and

(3) Any private entity that is not primarily engaged in the business of transporting people but operates a demand responsive or fixed route system.

(b) For entities receiving Federal financial assistance from the Department of Transportation, compliance with applicable requirements of this part is a condition of compliance with section 504 of the Rehabilitation Act of 1973 and of receiving financial assistance.

(c) Entities to which this part applies also may be subject to ADA regula-

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tions of the Department of Justice (28 CFR parts 35 or 36, as applicable). The provisions of this part shall be interpreted in a manner that will make them consistent with applicable Department of Justice regulations. In any case of apparent inconsistency, the provisions of this part shall prevail.

§ 37.23 Service under contract.

(a) When a public entity enters into a contractual or other arrangement or relationship with a private entity to operate fixed route or demand responsive service, the public entity shall ensure that the private entity meets the requirements of this part that would apply to the public entity if the public entity itself provided the service.

(b) A private entity which purchases or leases new, used, or remanufactured vehicles, or remanufactures vehicles, for use, or in contemplation of use, in fixed route or demand responsive service under contract or other arrangement or relationship with a public entity, shall acquire accessible vehicles in all situations in which the public entity itself would be required to do so by this part.

(c) A public entity which enters into a contractual or other arrangement or relationship with a private entity to provide fixed route service shall ensure that the percentage of accessible vehicles operated by the public entity in its overall fixed route or demand responsive fleet is not diminished as a result.

(d) A private entity that provides fixed route or demand responsive transportation service under contract or other arrangement with another private entity shall be governed, for purposes of the transportation service involved, by the provisions of this part applicable to the other entity.

§ 37.25 University transportation systems.

(a) Transportation services operated by private institutions of higher education are subject to the provisions of this part governing private entities not primarily engaged in the business of transporting people.

(b) Transportation systems operated by public institutions of higher education are subject to the provisions of this part governing public entities. If a